

## Department of Justice

## § 58.17

not limited to, changes in the location of primary or satellite business office(s); the principal contact person; name or fictitious name under which the agency does business; management, including the board of directors; a merger or consolidation with another entity; and the banks or financial institutions used by the agency;

(2) The agency shall request approval by amendment to its application, and prior to occurrence of the following changes:

(i) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(ii) The engagement of a service provider to provide counseling services to administer debt management plans, or to otherwise control or account for client funds;

(iii) An increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's policy for the reduction or waiver of fees;

(iv) Expansion into additional judicial districts or withdrawal from judicial districts where the agency is approved; and

(v) Method of delivery or type of counseling services;

(3) The agency must include with any amendment to its application, a newly executed "certification and signature;"

(4) The agency will notify the EOUST immediately upon the occurrence of any of the below noted events:

(i) Cancellation or termination of tax exempt status of the agency by the Internal Revenue Service;

(ii) Cessation of business of the agency or of any office of the agency;

(iii) Termination or cancellation of any surety bond or fidelity insurance;

(iv) Any action brought against the agency by a Federal or state agency, including, but not limited to, the Federal Trade Commission, or any action against the surety bond or fidelity insurance;

(v) Any action by a state agency to suspend the license or cancel other authorization to do business;

(vi) A suspension by an accreditation organization or denial of accreditation;

(vii) Withdrawal as an approved agency; and

(viii) Change in the agency's non-profit status;

(j) An approved agency may not transfer or assign its United States Trustee approval under section 111 as a nonprofit budget and credit counseling agency to any party.

[71 FR 38078, July 5, 2006]

### **§ 58.17 Procedures for denying an application or removing an agency from the approved list, and the administrative review rights granted to denied or removed agencies.**

(a) As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) No administrative review will be granted to any applicant that submitted an incomplete application and had its application denied due to incompleteness and failed to subsequently submit a completed application.

(c) The agency shall be notified in writing of any decision to deny the agency's application or to remove the agency from the approved list ("notice"). The notice shall state the reason(s) for the decision and shall reference any documents or communications with the agency, which were relied upon in making the denial or removal decision. If such documents or communications were not provided to the United States Trustee or the EOUST by the agency, copies of the documents or communications shall be provided with the notice. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(d) The notice shall advise the agency that the decision is final unless the agency requests in writing a review ("request for review") by the Director, Executive Office for United States Trustees ("Director"), no later than 20 calendar days from the date of issuance of the denial or removal notice. In order to be timely, a request for review must be received at the Office of the Director no later than 20 calendar days from the date of the denial or removal notice to the agency.

(e) A decision to remove an agency from the approved list shall take effect upon the expiration of an agency's time to seek review from the Director

or, if the agency timely seeks such review, upon the issuance of a final written decision by the Director.

(f) Notwithstanding sub-paragraph (e) of this section, a decision to remove an agency from the approved list may include, or may later be supplemented by, an interim directive, which may immediately remove an agency from the approved list. Such an interim directive may be issued if one or more of the following are specifically found:

(1) The agency is not providing for the safekeeping and payment of client funds;

(2) The agency's surety bond has been canceled;

(3) The agency made a material false statement on the application;

(4) The agency (board of directors, officer, manager, employee, counselor, or agent) has engaged in conduct that is dishonest, deceitful, fraudulent, or criminal in nature;

(5) The agency (board of directors, officer, manager, employee, counselor, or agent) has engaged in other gross misconduct that is unbecoming the agency's position as an approved agency;

(6) The agency's nonprofit status has been revoked by the entity that issued the agency its nonprofit status;

(7) Revocation of the agency's license to do business in a particular state, provided the immediate removal shall apply only to the federal judicial districts within the particular state; or

(8) The Internal Revenue Service revokes the agency's tax exempt status.

(g) The agency's request for review shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials that the agency wants the Director to consider in reviewing the decision. The agency shall send a copy of the request for review, and the accompanying documents and materials, to the Director by overnight courier, for delivery the next business day, and must be received by the Director within 20 calendar days of the denial or removal notice.

(h) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(i) The Director shall issue a written decision no later than 45 calendar days

from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the period. That decision shall determine whether the denial or removal decision is supported by the record and the action is an appropriate exercise of discretion, and shall adopt, modify, or reject the denial or removal decision. The Director's decision shall constitute final government agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the denial or removal decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

[71 FR 38078, July 5, 2006]

**§§ 58.18–58.24 [Reserved]**

**§ 58.25 Qualifications for approval as providers of a personal financial management instructional course.**

(a) *Definition of provider.* As used in this section the term "provider" means a provider of a personal financial management instructional course.

(b) *Qualifications.* To be included on the list of approved providers under 11 U.S.C. 111, a provider shall meet the qualifications set forth in paragraphs (d) through (k) of this section. A provider shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of a provider.

(d) *Structure and organization.* A provider of a personal financial management instructional course must be in compliance with all applicable laws